

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
BRUDERMAN ASSET MANAGEMENT, LLC,	:	20cv3164 (DLC)
	:	
Plaintiff,	:	<u>ORDER</u>
-v-	:	
	:	
REAL TIME CONSULTANTS, INC.,	:	
	:	
Defendant.	:	
-----	X	

DENISE COTE, District Judge:

Having recently been reassigned this action, on August 23, 2022, the Court ordered the parties to explain their positions on whether the amount in controversy requirement for jurisdiction under 28 U.S.C. § 1332(a) is met in this case given a limitation of liability provision. The defendant responded on September 2; the plaintiff on September 16.


There is subject matter jurisdiction for this dispute in federal court. A jurisdictional determination is to be made "on the basis of the plaintiff's allegations, not a decision on the merits. Moreover, even where those allegations leave grave doubt about the likelihood of recovery of the requisite amount, dismissal is not warranted." Zacharia v. Harbor Island Spa, Inc., 684 F.2d 199, 202 (2d Cir. 1982). Instead, to dismiss a case based on failure to satisfy the amount in controversy requirement, "it must appear to a legal certainty from the complaint that the plaintiff cannot recover sufficient damages

to invoke federal jurisdiction.” Id. As a result, “even if defendant’s liability were [ultimately] limited” to an amount less than \$75,000 based on a limitation of liability clause or other defense, “plaintiff would nevertheless have a live claim” in federal district court for a greater amount. Id.

Here, plaintiff alleges that its damages exceed \$2,950,000. The complaint acknowledges the existence of the limitation of liability clause but alleges that the clause is unenforceable because it is unconscionable and a violation of public policy. Thus, it does not “appear to a legal certainty from the complaint that the plaintiff cannot recover sufficient damages to invoke federal jurisdiction.” Id. While defendant may prevail and any recovery by the plaintiff be less than \$75,000, that is insufficient to defeat subject matter jurisdiction. See id.

SO ORDERED:

Dated: New York, New York
September 23, 2022



DENISE COTE
United States District Judge